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BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Application Number: 09/634,546
Filing Date: August 08, 2000
Appellant(s): MEGIDDO, NIMROD

Ramraj Soundararajan
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 12/10/2007 appealing from the Office action mailed 07/06/2007.

(1) A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

US PG Pub 2005/0228748	Togher at al	10/2005
6,446,261	Rosser	09/2002

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1, 3-16, **21** and 23-28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Togher et al (U.S. PG Pub No. 2005/0228748) in view of Rosser (U.S. Patent No. 6,446,261).

As per claims 1 and 27, Togher et al teach a system for enhancing price discovery of products available in electronic commerce, auctions an anonymous buyer profile, one or more automated surveyors for surveying a plurality posted prices, bid prices, posted quotes, quoted prices including within at least one of the one or more automated surveyors, the sophisticated buyer used as the buyer by the automated surveyors, and wherein use of the anonymous buyer profile increases the probability of discovering the best prices in an electronic commerce environment which includes electronic price discrimination (*see abstract, paragraphs 0003, 0006-0009, 0034, 0039, 0043*). Togher et al fail to teach a system wherein the anonymous buyer profile used multiple times to develop historical usage therefore, the historical usage representing a sophisticated buyer (*see abstract, column 1 lines 29-2 line 24)*. However, Rosser teaches a system wherein the anonymous buyer profile used multiple times to develop historical usage therefore, the historical usage representing a sophisticated buyer (*see*

abstract, column 4 line 15-line 48, 8 line 39-55). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Togher et al to include Rosser system wherein the anonymous buyer profile used multiple times to develop historical usage therefore, the historical usage representing a sophisticated buyer because this would have provided an interactive and automated systems and methods for conducting financial transactions and related financial information in capital markets without knowledge of who the customer (user) is.

As per claim 3, Togher et al teach a system wherein the developed anonymous buyer profile is used to make actual purchases for a buyer using the system without disclosing the identity of the buyer (*see abstract, paragraphs 0003, 0006-0009, 0034, 0039, 0043*).

As per claim 4, Togher et al teach a system wherein when the system makes actual purchases for a buyer it further includes receiving purchased at least one item at a site owned by system operator or a third party, and shipping at least item to the buyer (*see abstract, paragraphs 0003, 0006-0009, 0034, 0039, 0043*)

As per claim 5, Togher et al teach a system wherein the surveying posted prices further comprises collecting information about wholesale prices generating reference points, and assessing from the reference points whether a posted price is reasonable (*see abstract, paragraphs 0003, 0006-0009, 0034, 0039, 0043*).

As per claim 6, Togher et al teach a system wherein the surveying posted quotes further comprises scanning continuously commercial sites on a network extracting posted quotes from the sites, maintaining a database of posted quotes, and pointing a buyer to vendors that post a best price based on the posted quotes for an item the buyer is interested in (*see abstract, paragraphs 0003, 0006-0009, 0034, 0039, 0043*).

As per claim 7, Togher et al teach a system wàerein the included within at least one of the one or more automated surveyors comprises choosing one of a plurality of available fictitious names requesting price quotes on behalf of the chosen fictitious names storing all received quotes, and maintaining statistics about the store received quotes for reference to future buyers using the system (*see abstract, paragraphs 0003, 0006-0009, 0034, 0039, 0043*).

As per claim 8, Togher et al teach a system wherein the system further comprises promoting competition among sellers by generating messages to inform sellers of lower prices quoted by their competitors advising the sellers to consider lowering prices, and maintaining a website, for public viewing, regarding ratings of sellers (*see abstract, paragraphs 0003, 0006-0009, 0034, 0039, 0043*).

As per claim 9, Togher et al teach a system wherein potential buyers receive messages of prices discovered by any of: e-mail, regular mail, or faxes (*see abstract, paragraphs 0003, 0006-0009, 0034, 0039, 0043*).

As per claim 10, Togher et al teach a system wherein the method of uncovering price structures further comprises probing a commercial site with varying parameters associated with the price of at least one product uncovering the underlying fee structure and how it varies with respect to different parameters, and suggesting to a potential buyer what parameters can be changed to save money (*see abstract, paragraphs 0003, 0006-0009, 0034, 0039, 0043*).

As per claim 11, Togher et al teach a system wherein the network include any of the internet, wireless web, LAN or WAN (*see fig 1.*).

As per claim 12, Togher et al teach a method for enhancing buyers performance in electronic commerce, wherein the method comprises: comprises using the sophisticated buyers to electronically gather information about prices on a network, electronically presenting information to sellers located across a network about sophisticated buyers who are not willing to pay more than a minimum price, and indicating to sellers when they are competitive and influencing them to lower prices (*see abstract, paragraphs 0003, 0006-0009, 0034, 0039, 0043*). Togher et al fail to teach the sophisticated buyers developed by historical use of anonymous buyer profiles, However, Rosser teach a system the sophisticated buyers developed by historical use of anonymous buyer profiles, (*see abstract, column 4 line 15-line 48, 8 line 39-55)*. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to

modify Togher to include Rosser system comprises the sophisticated buyers developed by historical use of anonymous buyer profiles because this would have provided an interactive and automated systems and methods for conducting financial transactions and related financial information in capital markets without knowledge of who the customer (user) is.

As per claim 13, Togher et al teach a method wherein the influencing them to lower prices comprises any generating messages to inform sellers of lower prices quoted by their competitors advising the sellers to consider lowering prices, and maintaining a website, for public viewing, regarding ratings of sellers (*see abstract, paragraphs 0003, 0006-0009, 0034, 0039, 0043*).

As per claim 14, Togher et al teach a method wherein the sophisticated buyers are used to anonymously make actual purchases for a buyer using the method (*see abstract, paragraphs 0003, 0006-0009, 0034, 0039, 0043*).

As per claim 15, Togher et al teach a method wherein when the method anonymously makes actual purchases for a buyer it further includes receiving purchased items at a site owned by system operator or a third party and shipping item to the buyer (*see abstract, paragraphs 0003, 0006-0009, 0034, 0039, 0043*)

As per claim 16, Togher et al teach a method wherein the network includes one of the internet, WWW, wireless web, LAN or WAN (*see fig 1*).

As per claim 21, Togher et al teach a method for enhancing buyers performance in electronic commerce comprising surveying quoted prices located across a network, comprising requesting price quotes using the fictitious names building reputation of the fictitious names as sophisticated buyer, and computing a quote a known buyer receives to what has bean observed in the system by the sophisticated buyer, continuously screening commercial sites on a network using the sophisticated buyers to retrieve product price information including at least quotes generating statistical distribution of the quotes (*see abstract, paragraphs 0003, 0006-0009, 0034, 0039, 0043*). Togher et al fail to teach a system of generating fictitious user names. However, Rosser teaches a system of generating fictitious user names (*see abstract, column 4 line 15-line 48, 8 line 39-55)*. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Togher to include Rosser et teach a system of generating fictitious user names because this would have provided an interactive and automated systems and methods for conducting financial transactions and related financial information in capital markets without knowledge of who the customer (user) is.

As per claim 23, Togher et al.teach a method wherein the known buyer's anonymity is protected comprises providing buyer the option of purchasing item for him purchasing the item using one of many the available fictitious names receiving item at a site owned

by system operator, and shipping item to buyer (*see abstract, paragraphs 0003, 0006-0009, 0034, 0039, 0043*).

As per claim 24, Togher et al teach a method further comprising promoting competition among sellers comprising generating messages to inform sellers of lower prices quoted by their competitors advising the sellers to consider lowering prices, and maintaining a website, for public viewing, regarding ratings of sellers (*see abstract, paragraphs 0003, 0006-0009, 0034, 0039, 0043*).

As per claim 25, Togher et al teach a method wherein the messages generated include one of the following: e-mail, regular mail, or faxes (*see abstract, paragraphs 0003, 0006-0009, 0034, 0039, 0043*).

As per claim 26, Togher et al teach a method further comprising a method of uncovering price structures by probing a commercial site with varying parameters associated with the price of at least one product uncovering the underlying fee structure and how it varies with respect to different parameters, and suggesting to the buyer what parameters can be changed to save money (*see abstract, paragraphs 0003, 0006-0009, 0034, 0039, 0043*).

As per claim 28, Togher et al teach an article of manufacturing comprising a computer user medium having computer readable program code embodied therein which

enhances buyers performance in electronic commerce, wherein code for the automated surveyors using the one or more anonymous buyer profiles further comprises computer code for concealing a buyers true identity picking one of many available fictitious names, requesting price quotes on behalf of a buyer without revealing the buyer's true identity, storing all received quotes, and maintaining statistics about the stored received quotes for reference of future buyers (*see abstract, paragraphs 0003, 0006-0009, 0034, 0039, 0043*).

(10) Response to Argument

Applicant's arguments filed 12/10/2007 have been fully considered but they are not persuasive.

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988)and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, the references are in the same environment and therefore are combinable.

Applicant further argues that the Office action summary of the Office action of 11/02/2006 indicates that claims 1, 3-16 and 23-38 are pending in the application, but

omits to mention pending claim 21. As indicated above, the status of claim 21 is mentioned as follows claims 1, 3-16, **21** and 23-28 are rejected under 35 U.S.C. 103 (a) as being unpatentable over Togher in view of Rosser. Moreover, the rejection to claim 21 has been provided in the Office action mailed on 11/02/2006, page 6. Therefore, Applicant argument is moot.

Applicant also argues that neither Togher nor Rosser teaches the limitation of "the anonymous buyer profile". However, the Examiner respectfully disagrees with this assertion since Rosser teaches a system wherein the anonymous buyer profile used multiple times to develop historical usage therefore, the historical usage representing a sophisticated buyer (*see abstract, column 4 line 15-line 48, 8 line 39-55)*. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Togher et al to include Rosser system wherein the anonymous buyer profile used multiple times to develop historical usage therefore, the historical usage representing a sophisticated buyer because this would have provided an interactive and automated systems and methods for conducting financial transactions and related financial information in capital markets without knowledge of who the customer (user) is.

Applicant also maintains that neither Togher nor Rosser teaches the limitation of sophisticated buyers being develop by historical use of anonymous buyer profiles. As mentioned above, Rosser teaches a system the sophisticated buyers developed by historical use of anonymous buyer profiles, (*see abstract, column 4 line 15-line 48, 8*

line 39-55). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Togher to include Rosser system comprises the sophisticated buyers developed by historical use of anonymous buyer profiles because this would have provided an interactive and automated systems and methods for conducting financial transactions and related financial information in capital markets without knowledge of who the customer (user) is.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/Pierre Eddy Elisca/

Conferees:

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